

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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| PATRICK LAWRENCE MARTHEY, |) | CASE NO. 5:12 CV 2759 |
| |) | |
| Plaintiff, |) | JUDGE DAN AARON POLSTER |
| |) | |
| vs. |) | <u>MEMORANDUM OF OPINION</u> |
| |) | <u>AND ORDER</u> |
| COMMISSIONER OF SOCIAL |) | |
| SECURITY, |) | |
| |) | |
| Defendant. |) | |

On November 6, 2012, Plaintiff Patrick Lawrence Marthey filed this action seeking judicial review of the final decision of Defendant Commissioner of Social Security denying his application for disability insurance benefits. (Doc #: 1.) The appeal was automatically referred to a Magistrate Judge for preparation of a Report and Recommendation (“R&R”) pursuant to Local R. 72.2(b)(1). (Non-document entry of 11/6/12.) The Commissioner filed a motion to dismiss, subsequently converted to a summary judgment motion, based on the expiration of the statute of limitations. (Respectively, Doc ##: 16, 21.) Following briefing, the Magistrate Judge issued an R&R finding that Plaintiff filed his appeal one day after the statute of limitations expire; he failed to sufficiently rebut the presumption that the date typed on the Appeals Council’s decision was the date the notice actually issued; he did not argue that equitable tolling

should save his appeal; and he did not seek an extension of time from the Appeals Council to file the within complaint. (Doc #: 22.)

Accordingly, on September 12, 2013, the Magistrate Judge recommended that the Court grant the summary judgment motion and dismiss this appeal. (Id.) Following this conclusion, the Magistrate Judge advised:

Any objections to the Report and Recommendation must be filed with the Clerk of Courts within fourteen (14) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order.

(Id. at 11.)

Under the relevant statute:

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

28 U.S.C. § 636(b)(1) (emphasis added). In this case, 21 days have elapsed since the R&R was issued, and Plaintiff has filed neither an objection nor a request for an extension of time to file one.

The failure to timely file written objections to an R&R constitutes a waiver of a *de novo* determination by the district court of an issue covered in the report. *Thomas v. Arn*, 728 F.2d 813 (6th Cir. 1984); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Despite the lack of objection, the Court has reviewed the Magistrate Judge's thorough, well-written R&R, agrees with the Magistrate Judge's findings and conclusions and **ADOPTS**

the Magistrate Judge's R&R (**Doc #: 22**), **GRANTS** the summary judgment motion (**Doc #: 16**), and **DISMISSES WITH PREJUDICE** this Social Security appeal (**Doc #: 1**).

IT IS SO ORDERED.

/s/ *Dan A. Polster* *October 4, 2013*

Dan Aaron Polster

United States District Judge